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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

12 JOSE ALVARADO, JIMENA
13 ALVARADO, ERIKA ALVARADO,
14 and MARCOS ALVARADO, in each
case individually and as successor in
interest to Delfino Avila, deceased.

15 || Plaintiffs,

16 | VS.

17 CITY OF SAN BERNARDINO; ZACK
18 EWING; CARLA GUTIERREZ; and
DOES 3-10, inclusive,

19|| Defendants.

Case No. 5:24-cv-00088-JGB-SHK

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—Unlawful Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)
5. Municipal Liability – Inadequate Training (42 U.S.C. § 1983)
6. Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
7. Municipal Liability – Ratification (42 U.S.C. § 1983)
8. False Arrest/ False Imprisonment
9. Battery (wrongful death and survival)
10. Negligence (wrongful death and survival)
11. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR DAMAGES**

2 COME NOW Plaintiffs JOSE ALVARADO, JIMENA ALVARADO,
3 ERIKA ALVARADO, AND MARCOS ALVARADO, individually and as
4 successors in interest to Delfino Avila, deceased, for their Complaint against
5 Defendants CITY OF SAN BERNARDINO, ZACK EWING, CARLA
6 GUTIERREZ, and DOES 3-10, inclusive, and allege as follows:

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8

JURISDICTION AND VENUE

9 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
10 and 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the
11 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
12 Amendments of the United States Constitution. This Court has supplemental
13 jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. §
14 1337(a), because those claims are so related to the federal claims that they form part
15 of the same case or controversy under Article III of the United States Constitution.

16 2. Venue is proper in this Court under 28 U.S.C. § 1331(b) because
17 Defendants reside in this district and all incidents, events, and occurrences giving
18 rise to this action occurred in this district.

19

20

INTRODUCTION

21 3. This civil rights and state tort action seeks compensatory and punitive
22 damages from Defendants for violating various rights under the United States
23 Constitution and state law in connection with the fatal officer-involved shooting of
24 Plaintiffs' father, Delfino Avila ("DECEDENT"), on November 30, 2022.

25

26

PARTIES

27 4. At all relevant times, DECEDENT was an individual residing in San
28 Bernardino, California.

1 5. Plaintiff JOSE ALVARADO (“JOSE”) is an individual residing in San
2 Bernardino, California and is the natural son of DECEDENT. JOSE sues in his
3 individual capacity as the son of DECEDENT and also as a successor in interest to
4 DECEDENT. JOSE seek both survival and wrongful death damages under federal
5 and state law.

6 6. Plaintiff MARCOS ALVARADO (“MARCOS”) is an individual
7 residing in San Bernardino, California and is the natural son of DECEDENT.
8 MARCOS sues in his individual capacity as the son of DECEDENT and also as a
9 successor in interest to DECEDENT. MARCOS seeks both survival and wrongful
10 death damages under federal and state law.

11 7. Plaintiff ERIKA ALVARADO (“ERIKA”) is an individual residing in
12 San Bernardino, California and is the natural daughter of DECEDENT. ERIKA
13 sues in her individual capacity as the daughter of DECEDENT and also as a
14 successor in interest to DECEDENT. ERIKA seeks both survival and wrongful
15 death damages under federal and state law.

16 8. Plaintiff JIMENA ALVARADO (“JIMENA”) is an individual residing
17 in San Bernardino, California and is the natural daughter of DECEDENT. JIMENA
18 sues in her individual capacity as the daughter of DECEDENT and also as a
19 successor in interest to DECEDENT. JIMENA seeks both survival and wrongful
20 death damages under federal and state law.

21 9. Defendant ZACK EWING (“EWING”) is a Police officer working for
22 the SBPD. At all relevant times, EWING was acting under color of law within the
23 course and scope of their duties as a police officer for the SBPD. EWING was
24 acting with the complete authority and ratification of his principal, Defendant CITY,
25 at all relevant times.

26 10. Defendant CARLA GUTIERREZ (“GUTIERREZ”) is a Police officer
27 working for the SBPD. At all relevant times, GUTIERREZ was acting under color
28 of law within the course and scope of their duties as a police officer for the SBPD.

1 GUTIERREZ was acting with the complete authority and ratification of her
2 principal, Defendant CITY, at all relevant times.

3 11. At all relevant times, Defendant CITY OF SAN BERNARDINO
4 (“CITY”) is and was a municipal corporation existing under the laws of the State of
5 California. CITY is a chartered subdivision of the State of California with the
6 capacity to be sued. CITY is responsible for the actions, omissions, policies,
7 procedures, practices, and customs of its various agents and agencies, including the
8 San Bernardino Police Department and its agents and employees. At all relevant
9 times, Defendant CITY was responsible for assuring that the actions, omissions,
10 policies, procedures, practices, and customs of the San Bernardino Police
11 Department and its employees and agents complied with the laws of the United
12 States and of the State of California. At all relevant times, CITY was the employer
13 of Defendants EWING, GUTIERREZ, and DOES 3-10.

14 12. Defendants DOES 3-7 (“DOE OFFICERS”) are, and were at the time
15 of this incident, police officers working for the San Bernardino Police Department.
16 At all relevant times, DOE OFFICERS were acting under color of law within the
17 course and scope of their duties as police officers for the San Bernardino Police
18 Department. At all relevant times, DOE OFFICERS were acting with the complete
19 authority and ratification of their principal, Defendant CITY.

20 13. Defendants DOES 8-10 are, and were at the time of this incident,
21 managerial, supervisorial, and policymaking employees of the San Bernardino
22 Police Department, who were acting under color of law within the course and scope
23 of their duties as managerial, supervisorial, and policymaking employees for the San
24 Bernardino Police Department. At all relevant times, DOES 8-10 were acting with
25 the complete authority and ratification of their principal, Defendant COUNTY.

26 14. On information and belief, EWING, GUTIERREZ, and DOES 3-10
27 were residents of the County of San Bernardino.

1 15. In doing the acts and failing and omitting to act as hereinafter
2 described, Defendants EWING, GUTIERREZ, and DOE OFFICERS were acting on
3 the implied and actual permission and consent of Defendants DOES 8-10 and the
4 CITY.

5 16. In doing the acts and failing and omitting to act as hereinafter
6 described, Defendants EWING, GUTIERREZ, and DOES 3-10 were acting on the
7 implied and actual permission and consent of the CITY.

8 17. The true names and capacities, whether individual, corporate,
9 association or otherwise of Defendants DOES 3-10, inclusive, are unknown to
10 Plaintiffs, who otherwise sue these Defendants by such fictitious names. Plaintiffs
11 will seek leave to amend this complaint to show the true names and capacity of
12 these Defendants when they have been ascertained. Each of the fictitiously named
13 Defendants are responsible in some manner for the conduct or liabilities alleged
14 herein.

15 18. At all times mentioned herein, each and every defendant was the agent
16 of each and every other defendant and had the legal duty to oversee and supervise
17 the hiring, conduct, and employment of each and every defendant.

18 19. All of the acts complained of herein by Plaintiffs against Defendants
19 were done and performed by said Defendants by and through their authorized
20 agents, servants, and/or employees, all of whom at all relevant times herein were
21 acting within the course, purpose, and scope of said agency, service, and/or
22 employment capacity. Moreover, Defendants and their agents ratified all of the acts
23 complained of herein.

24 20. EWING, GUTIERREZ, and DOES 3-10 are sued in their individual
25 capacity.

26 21. On or around May 25, 2023, Plaintiffs filed comprehensive and timely
27 claims for damages with the City of San Bernardino and the City of San Bernardino

1 pursuant to applicable sections of the California Government Code. The claims
2 were rejected by operation of law.

3 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

4 22. Plaintiffs repeat and re-allege each and every allegation in the prior
5 paragraphs of this Complaint with the same force and effect as if fully set forth
6 herein.

7 23. On November 30, 2022, EWING and GUTIERREZ responded to a call
8 regarding an unidentified male setting fire to a palm tree. EWING and GUTIERREZ
9 contacted DECEDENT in a driveway of a residence. At that time, DECEDENT
10 was not setting any fires or committing any serious or violent crime. DECEDENT
11 walked away from the officers, into a backyard.

12 24. EWING and GUTIERREZ each deployed their Taser at DECEDENT,
13 which escalated the situation. A reasonably well-trained police officer in the
14 position of EWING and GUTIERREZ would have known that DECEDENT was
15 mentally ill or experiencing a mental crisis, and would have known that the Taser
16 usage would escalate the situation involving DECEDENT. Before the officers
17 deployed their Tasers, the officers failed to give DECEDENT a verbal warning that
18 he would be Tased. The officers also failed to give DECEDENT sufficient
19 commands and time to comply with those commands.

20 25. After the officers deployed their Tasers against DECEDENT, EWING
21 fired lethal shots at DECEDENT. Prior to shooting, EWING failed to give
22 DECEDENT a verbal warning that deadly force would be used, even though it
23 would have been feasible to do so. GUTIERREZ integrally participated in and
24 failed to intervene in the shooting, and GUTIERREZ had a realistic opportunity and
25 responsibility to intervene.

26 26. The uses of force by EWING and GUTIERREZ, including the Taser
27 deployment and the lethal shots fired by EWING, were negligent, excessive,
28 unreasonable, unjustified, inappropriate, and contrary to basic police training.

1 DECEDENT posed no immediate threat of death or serious bodily injury to any
2 person during this incident, including during the use of the uses of force.
3 DECEDENT held a wooden cross or object during this incident, and he was not
4 armed with a knife, gun or other weapon and did not have the present ability to
5 immediately cause death or serious bodily injury to any person. EWING and
6 GUTIERREZ failed to properly handle the situation involving a person who is
7 mentally ill or experiencing a mental health crisis.

8 27. Prior to the shooting, the officers engaged in pre-shooting negligent
9 tactics, including escalating a situation involving a mentally ill individual, failing to
10 create an appropriate tactical plan, failing to communicate amongst themselves,
11 failing to give verbal warnings that force would be used.

12 28. Plaintiffs are DECEDENT's successors in interest as defined in Section
13 377.11 of the California Code of Civil Procedure and each succeed to
14 DECEDENT's interest in this action as the natural adult children of DECEDENT.
15

FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ)

19 29. Plaintiffs repeat and re-allege each and every allegation in the prior
20 paragraphs of this Complaint with the same force and effect as if fully set forth
21 herein.

22 30. When Defendants EWING and GUTIERREZ trained their weapons on
23 DECEDENT, he was not free to leave. EWING and GUTIERREZ struck
24 DECEDENT with the Taser, and EWING struck DECEDENT with lethal rounds,
25 thereby seizing him. After the shooting, EWING and GUTIERREZ handcuffed
26 DECEDENT. EWING and GUTIERREZ did not observe DECEDENT commit any
27 crime, and DECEDENT was not engaged in any criminal activity at the time of the
28

1 seizure, the use of force, or the handcuffing. In addition to the detention itself being
2 unreasonable, the scope and matter of the detention was also unreasonable.

3 31. When Defendants EWING and GUTIERREZ engaged in the foregoing
4 conduct, detaining DECEDENT without reasonable suspicion and then arresting
5 him without probable cause, they violated his right to be secure in his person against
6 unreasonable searches and seizures as guaranteed to him under the Fourth
7 Amendment to the United States Constitution and applied to state actors by the
8 Fourteenth Amendment.

9 32. The conduct of Defendants EWING and GUTIERREZ was willful,
10 wanton, malicious, and done with reckless disregard for the rights and safety of
11 DECEDENT and therefore warrants the imposition of exemplary and punitive
12 damages as to Defendants EWING and GUTIERREZ.

13 33. At all relevant times, EWING and GUTIERREZ were acting under
14 color of state law.

15 34. As a result of their misconduct, Defendants EWING and GUTIERREZ
16 are liable for DECEDENT's injuries, either because they were integral participants
17 in the wrongful detention and arrest, or because they failed to intervene to prevent
18 these violations.

19 35. As a result of the foregoing, DECEDENT suffered great physical pain
20 and emotional distress up to the time of his death after the shooting, and also
21 suffered a loss of enjoyment of life, loss of life, and loss of earning capacity. All
22 Plaintiffs bring this claim as successors in interest to DECEDENT and seek survival
23 damages, costs, and attorney's fees under this claim.

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SECOND CLAIM FOR RELIEF

Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ)

36. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

37. EWING and GUTIERREZ's unjustified tasing of DECEDEDENT, as well as EWING's use of lethal force against DECEDEDENT, deprived DECEDEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

38. The uses of force by EWING and GUTIERREZ, including the Taser deployment and the lethal shots, were excessive, unreasonable, unjustified, inappropriate, and contrary to basic police training. DECEDEDENT posed no immediate threat of death or serious bodily injury to any person during this incident, including during the use of the uses of force. DECEDEDENT had a wooden cross or object at certain points during this incident, and he was not armed with a knife, gun or other weapon.

39. EWING and GUTIERREZ failed to give DECEDENT a verbal warning before deploying their Tasers, even though it would have been feasible to do so. It also would have been feasible for EWING to give DECEDENT a verbal warning that deadly force would be used prior to shooting him, but EWING failed to do so, in violation of basic police training and standards.

40. The officers escalated the situation when they Tased DECEDENT. A reasonably well-trained officer in the position of EWING and GUTIERREZ would have known that DECEDENT was mentally ill or experiencing a mental crisis and would have known, based on police training, that deploying a Taser against a person who is mentally ill or experiencing a mental crisis would escalate the situation.

1 41. As a result of their misconduct, Defendants EWING and GUTIERREZ
2 are liable for DECEDENT's injuries, either because they were integral participants
3 in the uses of excessive force, or because they failed to intervene to prevent these
4 violations.

5 42. The conduct of Defendants EWING and GUTIERREZ was willful,
6 wanton, malicious, and done with reckless disregard for the rights and safety of
7 DECEDENT, and therefore warrants the imposition of exemplary and punitive
8 damages as to Defendants EWING and GUTIERREZ.

9 43. As a result of the foregoing, DECEDENT suffered great physical pain
10 and emotional distress up to the time of his death after the shooting, loss of
11 enjoyment of life, loss of life, and loss of earning capacity. Plaintiffs bring this
12 claim as successors in interest to DECEDENT, and seek survival damages for the
13 violation of DECEDENT's rights. All Plaintiffs further seek attorney's fees and
14 costs under this claim.

THIRD CLAIM FOR RELIEF

Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ)

19 44. Plaintiffs repeat and re-allege each and every allegation in the prior
20 paragraphs of this Complaint with the same force and effect as if fully set forth
21 herein.

22 45. After being struck by the Taser and shot by lethal rounds, DECEDEDNT
23 was immobile, bleeding profusely, and in obvious and critical need of emergency
24 medical care and treatment. Defendants EWING and GUTIERREZ did not timely
25 summon medical care or permit medical personnel to treat DECEDEDNT. The delay
26 of medical care to DECEDEDNT caused DECEDEDNT extreme physical and
27 emotional pain and suffering and was a contributing cause of DECEDEDNT's death.

1 46. The denial of medical care by the defendant officers deprived
2 DECEDENT of his right to be secure in his person against unreasonable searches
3 and seizures as guaranteed to him under the Fourth Amendment to the United States
4 Constitution and applied to state actors by the Fourteenth Amendment.

5 47. Defendants EWING and GUTIERREZ knew that failure to provide
6 timely medical treatment to DECEDENT could result in further significant injury or
7 the unnecessary and wanton infliction of pain, but disregarded that serious medical
8 need, causing DECEDENT great bodily harm and death.

9 48. The conduct of EWING and GUTIERREZ was willful, wanton,
10 malicious, and done with reckless disregard for the rights and safety of DECEDEDENT
11 and therefore warrants the imposition of exemplary and punitive damages as to
12 Defendants EWING and GUTIERREZ.

13 49. As a result of their misconduct, Defendants EWING and GUTIERREZ
14 are liable for DECEDENT's injuries, either because they were integral participants
15 in the denial of medical care, or because they failed to intervene to prevent these
16 violations.

17 50. As a result of the foregoing, DECEDENT suffered great physical pain
18 and emotional distress up to the time of his death, loss of enjoyment of life, loss of
19 life, and loss of earning capacity. All Plaintiffs bring this claim as successors in
20 interest to DECEDENT, and seek survival damages for the violation of
21 DECEDENT's rights. Plaintiffs further seek attorney's fees and costs under this
22 claim.

FOURTH CLAIM FOR RELIEF

Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)

(Against Defendants EWING and GUTIERREZ and DOE OFFICERS)

26 51. Plaintiffs repeat and re-allege each and every allegation in the prior
27 paragraphs of this Complaint with the same force and effect as if fully set forth
28 herein.

1 52. Plaintiffs had a cognizable interest under the Due Process Clause of the
2 Fourteenth Amendment of the United States Constitution to be free from state
3 actions that deprive them of life, liberty, or property in such a manner as to shock
4 the conscience, including but not limited to unwarranted state interference in
5 Plaintiffs' familial relationship with their father, DECEDENT.

6 53. The aforementioned actions of EWING and GUTIERREZ, including
7 escalating a situation involving a person who was having a mental crisis, unlawfully
8 detaining and arresting DECEDENT, Tasing him, shooting him with a lethal
9 firearm, and denying him medical care, along with other undiscovered conduct,
10 shock the conscience, in that they acted with deliberate indifference to the
11 constitutional rights of DECEDENT and Plaintiffs, and with purpose to harm
12 unrelated to any legitimate law enforcement objective.

13 54. The defendant officers had time to deliberate during this incident
14 before deploying their Tasers and before EWING deployed his lethal firearm,
15 including having time and opportunity to give DECEDENT a verbal warning that
16 force would be used, time to give DECEDENT further commands and time to
17 comply with these commands, and time to evaluate the reasonableness and necessity
18 of using force against DECEDENT. DECEDENT was not armed with a gun, knife,
19 or other weapon during this incident, and he posed no immediate threat of death or
20 serious bodily injury to any person at the time of the Tasing and the shooting.

21 55. EWING and GUTIERREZ thus violated the substantive due process
22 rights of Plaintiffs to be free from unwarranted interference with his familial
23 relationship with DECEDENT, his father.

24 56. As a direct and proximate cause of the acts of EWING and
25 GUTIERREZ, Plaintiffs suffered emotional distress, mental anguish, and pain.
26 Plaintiffs have also been deprived of the life-long love, companionship, comfort,
27 support, society, care, and sustenance of DECEDENT, and will continue to be so
28 deprived for the remainder of their natural lives.

57. The conduct of EWING and GUTIERREZ was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDEDENT and Plaintiffs, and therefore warrants the imposition of exemplary and punitive damages as to Defendants EWING and GUTIERREZ.

58. All Plaintiffs bring this claim individually and seek wrongful death damages under this claim for the interference with their familial relationship with DECEDENT. Plaintiffs seek attorney's fees and costs under this claim.

FIFTH CLAIM FOR RELIEF

Municipal Liability – Failure to Train (42 U.S.C. § 1983)

(Against Defendants CITY and DOES 8-10)

59. Plaintiffs repeat and re-allege each and every allegation in the prior paragraphs of this Complaint with the same force and effect as if fully set forth herein.

60. Defendants EWING and GUTIERREZ acted under color of law.

61. The acts of Defendants EWING and GUTIERREZ deprived
62 DECEDENT and Plaintiffs of their particular rights under the United States
63 Constitution.

19 62. The training policies of Defendant CITY was not adequate to train its
20 police officers to handle the usual and recurring situations with which they must
21 deal.

63. Defendant CITY was deliberately indifferent to the obvious consequences of its failure to train its police officers adequately.

24 64. The failure of Defendant CITY to provide adequate training caused the
25 deprivation of DECEDENT's rights by Defendants EWING and GUTIERREZ; that
26 is, the supervisory and municipal defendants' failures to train is so closely related to
27 the deprivation of DECEDENT's rights as to be the moving force that caused the
28 ultimate injury.

1 65. By reason of the aforementioned acts and omissions, Plaintiffs have
2 suffered loss of the love, companionship, affection, comfort, care, society, training,
3 guidance, and past and future support of DECEDENT. The aforementioned acts and
4 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
5 and death.

6 Accordingly, Defendants CITY and DOES 8-10 each are liable to
7 Plaintiff for compensatory damages under 42 U.S.C. § 1983.

8 67. Plaintiffs bring this claim as successors in interest to DECEDENT and
9 seek both survival and wrongful death damages under this claim. Plaintiffs also
10 seek attorney's fees and costs under this claim.

SIXTH CLAIM FOR RELIEF

13 || Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983)

(Against Defendants CITY and DOES 8-10)

15 68. Plaintiffs repeat and re-allege each and every allegation in the prior
16 paragraphs of this Complaint with the same force and effect as if fully set forth
17 herein.

18 || 69. Defendants EWING and GUTIERREZ acted under color of law.

19 70. Defendants EWING and GUTIERREZ acted pursuant to an expressly
20 adopted official policy or a longstanding practice or custom of Defendant CITY.

21 71. On information and belief, Defendants EWING and GUTIERREZ were
22 not disciplined, reprimanded, retrained, suspended, or otherwise penalized in
23 connection with the unlawful detention and arrest of DECEDEDENT, the uses of force
24 against DECEDEDENT, the denial of medical care to DECEDEDENT, or DECEDEDENT's
25 death.

26 72. Defendants DOES 8-10, together with other CITY policymakers and
27 supervisors maintained, inter alia, the following unconstitutional customs, practices,
28 and policies:

- 1 (a) Using excessive force, including excessive use of deadly force
2 and excessive use of less-lethal force;
- 3 (b) Providing inadequate training regarding the use of deadly force;
- 4 (c) Making unlawful detentions and arrests;
- 5 (d) Employing and retaining as police officers individuals such as
6 Defendants EWING and GUTIERREZ, whom Defendant CITY
7 at all times material herein knew or reasonably should have
8 known had dangerous propensities for abusing their authority
9 and for using excessive force;
- 10 (e) Inadequately supervising, training, controlling, assigning, and
11 disciplining CITY police officers, including EWING and
12 GUTIERREZ, whom Defendant CITY knew or in the exercise of
13 reasonable care should have known had the aforementioned
14 propensities and character traits;
- 15 (f) Maintaining grossly inadequate procedures for reporting,
16 supervising, investigating, reviewing, disciplining and
17 controlling misconduct by CITY police officers;
- 18 (g) Failing to adequately discipline CITY police officers,
19 respectively, for the above-referenced categories of misconduct,
20 including “slaps on the wrist,” discipline that is so slight as to be
21 out of proportion to the magnitude of the misconduct, and other
22 inadequate discipline that is tantamount to encouraging
23 misconduct;
- 24 (h) Announcing that unjustified shootings are “within policy,”
25 including shootings that were later determined in court to be
26 unconstitutional;

15 73. By reason of the aforementioned acts and omissions, Plaintiffs have
16 suffered loss of the love, companionship, affection, comfort, care, society, training,
17 guidance, and past and future support of DECEDENT. The aforementioned acts and
18 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
19 and death.

20 74. Defendants CITY and DOES 8-10, together with various other
21 officials, whether named or unnamed, had either actual or constructive knowledge
22 of the deficient policies, practices and customs alleged in the paragraphs above.
23 Despite having knowledge as stated above, these defendants condoned, tolerated and
24 through actions and inactions thereby ratified such policies. Said defendants also
25 acted with deliberate indifference to the foreseeable effects and consequences of
26 these policies with respect to the constitutional rights of DECEDEDENT, Plaintiffs,
27 and other individuals similarly situated.

1 75. By perpetrating, sanctioning, tolerating and ratifying the outrageous
2 conduct and other wrongful acts, CITY and DOES 8-10, acted with intentional,
3 reckless, and callous disregard for the life of DECEDENT and for DECEDENT's
4 and Plaintiffs' constitutional rights. Furthermore, the policies, practices, and
5 customs implemented, maintained, and still tolerated by Defendants CITY and
6 DOES 8-10, were affirmatively linked to and were a significantly influential force
7 behind the injuries of DECEDENT and Plaintiffs.

8 76. Accordingly, Defendants CITY and DOES 8-10, each are liable to
9 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

10 77. All Plaintiffs bring this claim individually and as successor in interest
11 to DECEDENT and seek both survival and wrongful death damages under this
12 claim. Plaintiffs seek attorney's fees and costs under this claim.

SEVENTH CLAIM FOR RELIEF

Municipal Liability for Ratification (42 U.S.C. §1983)

(Against Defendants CITY and DOES 8-10)

17 78. Plaintiffs repeat and re-allege each and every allegation in the prior
18 paragraphs of this Complaint with the same force and effect as if fully set forth
19 herein.

20 || 79. Defendants EWING and GUTIERREZ acted under color of law.

21 80. The acts of Defendants EWING and GUTIERREZ deprived
22 DECEDENT and Plaintiffs of their particular rights under the United States
23 Constitution.

24 81. Upon information and belief, a final policymaker, acting under color of
25 law, has a history of ratifying unreasonable uses of force, including deadly force.

26 82. Upon information and belief, final policymakers, acting under color of
27 law, who had final policymaking authority concerning the acts of Defendants
28 EWING and GUTIERREZ ratified the individual Defendants' acts and the bases for

1 them. Upon information and belief, the final policymakers knew of and specifically
2 approved of the individual Defendants' acts.

3 83. Upon information and belief, final policymakers have determined (or
4 will determine) that the acts of Defendants EWING and GUTIERREZ were “within
5 policy.”

6 84. On information and belief, the CITY ratified the conduct by EWING
7 and GUTIERREZ as alleged herein.

8 85. By reason of the aforementioned acts and omissions, Plaintiffs have
9 been deprived of the life-long love, companionship, comfort, support, society, care
10 and sustenance of DECEDENT, and will continue to be so deprived for the
11 remainder of their natural lives. The aforementioned acts and omissions also caused
12 DECEDENT's pain and suffering, loss of enjoyment of life, and death.

13 86. Accordingly, Defendants CITY and DOES 8-10 are liable to Plaintiffs
14 for compensatory damages under 42 U.S.C. § 1983.

15 87. Plaintiffs bring this claim both individually and as successors-in-
16 interest to DECEDENT. Plaintiffs seek survival damages, including for the nature
17 and extent of DECEDENT's injuries, pre-death pain and suffering, emotional
18 distress, and loss of life and enjoyment of life, as well as wrongful death damages,
19 attorneys' fees, and costs under this claim.

20 88. The conduct of Defendants DOES 8-10 was malicious, oppressive and
21 in reckless disregard for the rights and safety of DECEDENT and Plaintiffs and
22 warrants the imposition of exemplary and punitive damages as to DOES 8-10.

EIGHTH CLAIM FOR RELIEF

False Arrest/False Imprisonment (survival and wrongful death)

(Against Defendants CITY, EWING and GUTIERREZ)

27 89. Plaintiffs repeat and re-allege each and every allegation in the prior
28 paragraphs of this Complaint with the same force and effect as if fully set forth

1 herein.

2 90. Defendants lacked reasonable suspicion to detain and probable cause to
3 arrest DECEDENT.

4 91. Defendants EWING and GUTIERREZ intentionally deprived
5 DECEDENT of his freedom of movement by use of force, threats of force, menace,
6 fraud, deceit, and unreasonable duress when they trained their weapons
7 on him and then shot him multiple times with both lethal and less-than-lethal
8 rounds, thereby seizing him, and also when they handcuffed DECEDENT after their
9 uses of force, without probable cause.

10 92. The conduct of EWING and GUTIERREZ was a substantial factor in
11 causing the harm to DECEDENT.

12 93. As a result of their misconduct, EWING and GUTIERREZ are liable
13 for DECEDENT's injuries, either because they were integral participants in the false
14 arrest/false imprisonment, or because they failed to intervene to prevent these
15 violations.

16 94. At all relevant times, EWING and GUTIERREZ were working as
17 police officers for the City of San Bernardino Police Department and were acting
18 within the course and scope of their duties as police officers for the CITY.

19 95. Defendant CITY is vicariously liable for the wrongful acts of EWING
20 and GUTIERREZ pursuant to section 815.2(a) of the California Government Code,
21 which provides that a public entity is liable for the injuries caused by its employees
22 within the scope of the employment if the employee's act would subject him or her
23 to liability.

24 96. The conduct of EWING and GUTIERREZ was malicious, wanton,
25 oppressive, and accomplished with a conscious disregard for the rights of
26 DECEDENT, entitling Plaintiff to an award of exemplary and punitive damages as
27 to the individual defendants.

28

97. All Plaintiffs bring this claim individually and as successors in interest to DECEDENT, and seek both survival damages and wrongful death damages under this claim.

NINTH CLAIM FOR RELIEF

Battery (wrongful death and survival claim)

(Against Defendants CITY, EWING and GUTIERREZ)

8 98. Plaintiffs repeat and re-allege each and every allegation in the prior
9 paragraphs of this Complaint with the same force and effect as if fully set forth
10 herein.

11 99. The uses of force by EWING and GUTIERREZ, including the Taser
12 deployment and the lethal shots, were excessive, unreasonable, unjustified,
13 inappropriate, and contrary to basic police training. DECEDENT posed no
14 immediate threat of death or serious bodily injury to any person during this incident,
15 including during the use of the uses of force. DECEDENT held a wooden cross or
16 object during this incident, but he was not armed with a knife, gun or other weapon.

17 100. EWING and GUTIERREZ failed to give DECEDENT a verbal
18 warning before deploying their Tasers, even though it would have been feasible to
19 do so. It also would have been feasible for EWING to give DECEDENT a verbal
20 warning that deadly force would be used prior to shooting him, but EWING failed to
21 do so, in violation of basic police training and standards.

22 101. The officers escalated the situation when they Tased DECEDENT. A
23 reasonably well-trained officer in the position of EWING and GUTIERREZ would
24 have known that DECEDENT was mentally ill or experiencing a mental crisis and
25 would have known, based on police training, that deploying a Taser against a person
26 who is mentally ill or experiencing a mental crisis would escalate the situation.

27 102. As a direct and proximate result of the conduct of EWING and
28 GUTIERREZ, as alleged above, DECEDEDNT sustained injuries, died from his

1 injuries and also lost his earning capacity. As a direct and proximate result of the
2 conduct of EWING and GUTIERREZ as alleged above, DECEDEDENT suffered
3 survival damages pursuant to Code of Civil Procedure Section 377.34.

4 103. At all relevant times, EWING and GUTIERREZ were working as
5 police officers for the City of San Bernardino Police Department and were acting
6 within the course and scope of their duties as police officers for the CITY.

7 104. Defendant CITY is vicariously liable for the wrongful acts of EWING
8 and GUTIERREZ pursuant to section 815.2(a) of the California Government Code,
9 which provides that a public entity is liable for the injuries caused by its employees
10 within the scope of the employment if the employee's act would subject him or her
11 to liability.

12 105. The conduct of EWING and GUTIERREZ was malicious, wanton,
13 oppressive, and accomplished with a conscious disregard for the rights of Plaintiffs
14 and DECEDEDENT, entitling Plaintiffs, individually and as the successors in interest
15 to DECEDEDENT, to an award of exemplary and punitive damages as to Defendants
16 EWING and GUTIERREZ.

17 106. All Plaintiffs bring this claim individually and as successors in interest
18 to DECEDENT, and seek both survival damages and wrongful death damages under
19 this claim.

TENTH CLAIM FOR RELIEF

Negligence (wrongful death and survival claim)

(Against all Defendants)

24 107. Plaintiffs repeat and re-allege each and every allegation in the prior
25 paragraphs of this Complaint with the same force and effect as if fully set forth
26 herein.

27 108. Police officers, including EWING and GUTIERREZ, have a duty to
28 use reasonable care to prevent harm or injury to others. This duty includes only

1 making lawful detentions and arrests, using appropriate tactics, giving appropriate
2 commands, giving warnings, and not using any force unless necessary, using less
3 than lethal options, and only using deadly force as a last resort.

4 109. The uses of force by EWING and GUTIERREZ, including the Taser
5 deployment and the lethal shots, were negligent and contrary to basic police
6 training. DECEDENT posed no immediate threat of death or serious bodily injury to
7 any person during this incident, including during the use of the uses of force.
8 DECEDENT held a wooden cross or object during this incident, but he was not
9 armed with a knife, gun or other weapon.

10 110. EWING and GUTIERREZ negligently failed to give DECEDENT a
11 verbal warning before deploying their Tasers, even though it would have been
12 feasible to do so. It also would have been feasible for EWING to give DECEDENT
13 a verbal warning that deadly force would be used prior to shooting him, but EWING
14 failed to do so, in violation of basic police training and standards.

15 111. In violation of their police training, the officers escalated the situation
16 when they Tased DECEDENT. Properly trained police officers are taught recognize
17 signs of mental illness and taught to de-escalate situations involving a mentally ill
18 individual or a person who is experiencing a mental crisis. A reasonably well-
19 trained officer in the position of EWING and GUTIERREZ would have known that
20 DECEDENT was mentally ill or experiencing a mental crisis and would have
21 known, based on police training, that deploying a Taser against a person who is
22 mentally ill or experiencing a mental crisis would escalate the situation

23 112. Defendants EWING and GUTIERREZ breached their duty of care.
24 The actions and inactions of Defendants EWING and GUTIERREZ were negligent
25 and reckless, including but not limited to:

26 (a) the failure to properly and adequately assess the need to use
27 force against DECEDENT, and negligent use of the Taser and
28 negligent use of deadly force;

- (b) the negligent tactics and handling of the situation with DECEDENT, including pre-shooting negligence and the failure to properly handle a situation with a mentally ill individual or a person who is undergoing a mental crisis;
- (c) the negligent detention, negligent arrest, negligent failure to give a warning prior to using force, and the negligent use of force, including deadly force, against DECEDENT;
- (d) the failure to provide prompt medical care to DECEDENT after the shooting;
- (e) the failure to properly train and supervise employees, both professional and non-professional, including EWING and GUTIERREZ; and
- (f) the negligent communication of information during the incident.

14 113. As a direct and proximate result of Defendants' conduct as alleged
15 above, and other undiscovered negligent conduct, DECEDED was caused to suffer
16 severe pain and suffering and ultimately died. Also as a direct and proximate result
17 of Defendants' conduct as alleged above, Plaintiffs have suffered emotional distress
18 and mental anguish. Plaintiffs also have been deprived of the life-long love,
19 companionship, comfort, support, society, care and sustenance of DECEDED, and
20 will continue to be so deprived for the remainder of their natural lives.

21 114. At all relevant times, EWING and GUTIERREZ were working as
22 police officers for the City of San Bernardino Police Department and were acting
23 within the course and scope of their duties as police officers for the CITY.

24 115. Defendant CITY is vicariously liable for the wrongful acts of EWING,
25 GUTIERREZ, and DOES 3-10 pursuant to section 815.2(a) of the California
26 Government Code, which provides that a public entity is liable for the injuries
27 caused by its employees within the scope of the employment if the employee's act
28 would subject him or her to liability.

116. All Plaintiffs bring this claim individually and as successors in interest to DECEDENT, and seek both wrongful death and survival damages under this claim.

ELEVENTH CLAIM FOR RELIEF

(Violation of Cal. Civil Code § 52.1)

(Against all Defendants)

8 117. Plaintiffs repeat and re-allege each and every allegation in the prior
9 paragraphs of this Complaint with the same force and effect as if fully set forth
10 herein.

11 118. California Civil Code, Section 52.1 (the Bane Act), prohibits any
12 person from using violent acts or threatening to commit violent acts in retaliation
13 against any person for exercising that person's constitutional rights, which can be
14 shown by a reckless disregard for that person's civil rights. EWING and
15 GUTIERREZ intended to interfere with DECEDENT's constitutional rights, did
16 successfully interfere with DECEDENT's constitutional rights, and also acted with
17 reckless disregard for DECEDENT's constitutional rights.

18 119. Defendants EWING and GUTIERREZ intentionally committed and
19 attempted to commit acts of violence against DECEDEDENT.

20 120. On information and belief, Defendants intentionally committed the
21 above acts to discourage DECEDENT from exercising his civil rights, to retaliate
22 against him for invoking such rights, or to prevent him from exercising such rights,
23 which he was fully entitled to enjoy.

24 121. On information and belief, DECEDENT reasonably believed and
25 understood that the violent acts committed by Defendants EWING and
26 GUTIERREZ were intended to discourage him from exercising his constitutional
27 rights, to retaliate against him for invoking such rights, or to prevent him from
28 exercising such rights.

1 122. The conduct of Defendants EWING and GUTIERREZ was a
2 substantial factor in causing DECEDENT's and Plaintiffs' harms, losses, injuries,
3 and damages.

4 123. At all relevant times, EWING and GUTIERREZ were working as
5 police officers for the City of San Bernardino Police Department and were acting
6 within the course and scope of their duties as police officers for the CITY.

7 124. Defendant CITY is vicariously liable for the wrongful acts of EWING,
8 GUTIERREZ, and DOES 3-10 pursuant to section 815.2(a) of the California
9 Government Code, which provides that a public entity is liable for the injuries
10 caused by its employees within the scope of the employment if the employee's act
11 would subject him or her to liability.

12 125. Defendants DOES 8-10 are vicariously liable under California law and
13 the doctrine of *respondeat superior*.

14 126. The conduct of Defendants was malicious, wanton, oppressive, and
15 accomplished with a conscious disregard for DECEDENT's and Plaintiffs' rights,
16 justifying an award of exemplary and punitive damages as to Defendants DOE
17 OFFICERS.

18 127. All Plaintiffs bring this claim as successors in interest to DECEDENT,
19 and seek survival damages under this claim. Plaintiffs seek attorney's fees and costs
20 under this claim pursuant to Cal. Civ. Code §52.1.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs JOSE ALVARADO, JIMENA ALVARADO, ERIKA ALVARADO, and MARCOS ALVARADO request entry of judgment in their favor and against Defendants CITY OF SAN BERNARDINO, ZACK EWING, CARLA GUTIERREZ, and DOES 3-10, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: October 8, 2024

LAW OFFICES OF DALE K. GALIPO

s/ Dale K. Galipo

Dale K. Galipo
Renee V. Masongsong
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs JOSE ALVARADO, JIMENA ALVARADO, ERIKA
3 ALVARADO, and MARCOS ALVARADO hereby demand a trial by jury.

4

5 DATED: October 8, 2024 LAW OFFICES OF DALE K. GALIPO

6

7 *s/ Dale K. Galipo*

8 Dale K. Galipo
9 Renee V. Masongsong
9 *Attorneys for Plaintiffs*

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